

GRANT PHILLIPS LAW, PLLC

Justice for Merchants with MCA Debt

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(Not for service of papers)

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Dear Client,

I am very pleased to share with you the law firm's winter 2023 Merchant Cash Advance Newsletter.

- ✓ In this volume we will look at some of the ramifications to your Credit when originating an MCA.
- ✓ Next we share some of our latest MCA Debt defense litigation victories and settlements.
- ✓ We will then explore the new law in NY that was finally adopted to govern Commercial Loan Instruments, like an MCA. This is the 3rd and final draft signed into law and duly being enacted.

FINANCE YOUR MERCHANT CASH ADVANCE

LEGAL FEES:

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MERCHANT CASH ADVANCE and MY CREDIT SCORE.

You have decided to originate several Merchant Cash Advances. Your only remaining question is how the MCA's will impact your credit report and your credit score.

This article will attempt to provide a thorough answer to the above questions and explain the ramifications of a Merchant Cash Advance and the Personal Guarantors credit score.

When your credit report is first pulled:

At the time of originating a Merchant Cash Advance, a MCA Funder will conduct what it calls underwriting and or due diligence. This is the time for an MCA Funder to evaluate your borrowing credentials and to determine your existing debt. Although a vast majority of MCA Funders only care to see three (3) months of bank statements, to determine if there is a constant flow of revenue and receipts, other funders will add the extra provision of pulling your credit.

A Merchant provides permission and its social security number in the Merchant Cash Advance Application. At this time the proposed funder will pull a HARD copy of your report. The real problems begin when a Merchant Cash Advance brokers shops your MCA application around town, providing your applications and permission to pull credit to multiple and numerous funders.

A hard pull or query remains on your credit report for 2 years. Too many pulls will cause your score to decrease as the credit agencies (Experian, Transunion and Equifax) will determine that you are having difficulty obtaining credit.

Beware – you are signing a Personal Guarantee.

Another reason the MCA Funder will pull your credit report and score at the beginning of the process is because when originated you will be required to act as a Personal Guarantor. Thus, the funder pulls your personal credit to determine your worthiness to obtain a Merchant Cash Advance.

MCA Funders Credit Requirements.

The vast majority of MCA funders require at least a 550 to 650 credit score in order to provide working capital to you via the use of a Merchant Cash Advance.

Alternatives – A Soft Pull.

There is another form of pulling credit – often referred to as a “soft” pull. This type of credit pull does not affect your credit score. Therefore it is prudent when using a broker to make sure any MCA Funder the broker approaches with your application, conducts a soft pull only.

Trick to keeping your Credit Score Solid even with an MCA – 45 day exception.

If you know that numerous Merchant Cash Advance Funder will be pulling your credit and pulling as hard pulls, you should have all the potential lenders pull within no more than Forty-Five (45) days, the credit reporting agency will only consider the multiple hard pulls as one single pull. This will keep your credit score in place. Remember any Hard Credit Pull after 45 days **WILL BE CONSIDERED a PULL ON YOUR CREDIT AND REMAIN THERE FOR 2 YEARS.**

So you obtained an MCA – now what?

It is very rare for a Merchant Cash Advance Funder to report your Merchant Cash Advance to the credit agencies. 1. It costs them money and 2. Other than determining your credit score and therefore your credit worthiness, a MCA Funder typically won't report the providing of a Merchant Cash Advance.

What Happens to My Credit Score if I default on my Merchant Cash Advance?

For the reasons stated above it is unlikely that an MCA Funder will report your default to the Credit Reporting Agencies. Also, because a Merchant Cash Advance provides an MCA Funder the ability to sue on a default, it also provides permission for them to file UCC liens that are far more derogatory and painful than a drop in one's credit score. A UCC lien can lock up ones bank accounts.

Beware of Judgments – Do not ignore lawsuits.

One tool available to a Merchant Cash Advance Funder is the filing of a lawsuit against the personal guarantor merchant and the business that took out the MCA. If not responded to timely, the Plaintiff MCA Funder may obtain a default or summary judgment – a judgment with an Order of what is owed. This judgment can and often is reported to the Credit Agencies.

Conclusion

As can be determined from the explanations above, Credit Reports and Scores do not play a massive roll in a Merchant Cash Advance – but one should take caution to limit how many funders a broker may “shop” your application to, instruct that only “Soft” pulls be conducted and avoid Judgments.

Written by Attorney Grant Phillips, Esq.

GRANT PHILLIPS LAW PRIDES ITSELF ON ZELOUS AND AGGRESSIVE REPRESENTATION, STANDING UP TO FUNDERS AND OTHER BULLIES ON BEHALF OF OUR CLIENTS.

This list is a brief synopsis of some cases we settled or litigated and won during the past few months:

- ✓ Trucker with 4 MCA Positions. Defaulted. 3 UCC Liens filed. Settled without any negatives coming from the UCC liens. Total Balance \$390k – Settled \$250k over 24 months.
- ✓ Amazon and Shopify retailer. His Payment Processor was frozen with over \$100k inside the account by MCA Collection Attorney. Our firm litigated to file an emergency injunction removing the UCC, within 2 days, for fear of the business failing. Settled the MCA from \$750K to \$585K over 18 months without legal fees or default fees.

New York finally passed its third and final amendment to its Commercial Lending Regulation: SB 5740. The below represents a synopsis of the new adoptions and final edits. The law does address Merchant Cash Advance and factoring loans.

DO ANY REGULATIONS EXIST IN NEW YORK THAT GOVERN A MERCHANT CASH ADVANCE?

- New York State, by all accounts the haven State for Merchant Cash Advances, ironically is also one of the first States to enact laws that require certain consumer like disclosures even for several commercial loans.
- This is significant development since New York's Commercial Finance Disclosure Law (CFDL) went into effect August 1st, 2023 and in the law the CFDL has extended disclosure requirements ordinarily required for consumer lending to commercial financing instruments such as a merchant cash advance.
- The laws apply equally to both MCA brokers and MCA funders.
- The final rules are a good start, but fall short in several areas. For example an MCA Funder is exempt from full disclosure if they are "partnered" with FDIC insured banks. Another shortfall is the inclusion of a \$2,500,000 cap. Thus, commercial financing in excess of \$2.5M is exempt from the CFDL. Hardly ideal.
- Still in comparison to other States that enacted similar laws such as Virginia, California and Utah, the New York law goes a little further.
- The CFDL was in fact originally passed in 2020 and later amended to include additional commercial financing instruments such as a Merchant Cash Advance.
- Since 2020, the New York Department of Financial Services NYDFS issued multiple versions of the regulation and the law finally took effect on August 1, 2023.

Significant Adoptions of the CFDL:

- Bank Exception: MCA Entities of which a majority of the voting power or equity interest is owned, directly or indirectly, by a financial institution will be exempt from the CFDL. The most common institution would be a depository bank.
- New York Nexus: The final rules severely narrow the geography of where a transaction takes place or where the parties are from, in order to trigger the applicability of the CFDL.
- MCA Recipient Located: The final rules limit the CFDL to transactions where the recipient is directed or managed *from* New York or is a resident of New York. This is very similar to California's law. Both NY and CA allow a Merchant Cash Advance Funder to rely on the business address provided by the recipient in its application for financing to make the determination.
- Assignment: The law permits a Merchant Cash Advance Funder to assign their rights in the MCA Contract.
- Broker Compensation Disclosure: The final rules require any commercial financing that incorporates a Broker that the MCA Funder must inform the Business receiving the MCA in writing of how and by whom the broker will be compensated.
- Finance Charge Calculation: The final rules provide that the finance charge on a transaction should be calculated and disclosed. This means the fees that the Merchant Cash Advance Funder usually charges for underwriting and origination.

Sincerely,

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Grant Phillips
Managing Principal